

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN “CLEAN DIESEL”
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

**ORDER RE: MOTIONS TO ENFORCE
THE VOLKSWAGEN-BRANDED
FRANCHISE DEALER CLASS
ACTION SETTLEMENT AGREEMENT**

This Order Relates To:
Dkt. Nos. 3378, 3514, 3520

On September 18, 2015, EPA issued a notice of violation to Volkswagen, asserting that the company violated the Clean Air Act by using a defeat device in thousands of its “clean diesel” vehicles. The disclosure gave rise to a flood of litigation against Volkswagen, including suits by Volkswagen-branded franchise dealers. A class of dealers ultimately settled their claims against Volkswagen, as set forth in the Court-approved Volkswagen-Branded Franchise Dealer Class Action Settlement Agreement. (Dkt. Nos. 1970, 2807.) Pursuant to the Settlement Agreement, Volkswagen Group of America, Inc. (“VWGoA”) has agreed to make a series of payments “directly to . . . Class Members.” (Dkt. No. 1970 ¶ 4.1.1.) Class Members are defined as “all authorized Volkswagen dealers in the United States who, on September 18, 2015, operated a Volkswagen branded dealership pursuant to a valid Volkswagen Dealer Agreement,” and who did not opt-out of the Settlement. (*Id.* ¶¶ 2.4, .9.)

JO Imports Ltd., d/b/a/ Executive Volkswagen of North Haven (“Executive VW”), currently operates a Volkswagen-branded franchise dealership located in North Haven, Connecticut. Executive VW purchased the dealership from Montesi Motors, Inc. (“Montesi”) in 2015. Although Executive VW and Montesi executed an Asset Purchase and Sale Agreement on July 11, 2015, the sale did not close until November 3, 2015, and Executive VW did not become

1 an authorized Volkswagen dealer until November 4, 2015, when VWGoA and Executive VW
2 executed a Volkswagen Dealer Agreement. (Altieri Decl., Dkt. No. 3520-1 ¶¶ 4, 9-10 & Ex. E.)
3 Because Montesi was the authorized Volkswagen dealer for the North Haven dealership on
4 September 18, 2015, VWGoA has and continues to make settlement payments to Montesi, not
5 Executive VW. (Dkt. No. 3378-2 ¶¶ 18-19.)

6 Earlier this year, Executive VW filed a breach of contract action against Montesi in
7 Connecticut Superior Court, asserting that it entered into an agreement with Montesi after
8 September 18, 2015, but before the dealership sale closed, in which Montesi agreed that it would
9 distribute to Executive VW future payments it received from Volkswagen relating to the emissions
10 scandal. (Dkt. No. 3378-3.) Executive VW also filed an interpleader action in Connecticut
11 Superior Court against Montesi, Montesi's president (Gary Montesi), and VWGoA, in which
12 Executive VW asked the Superior Court to determine "the parties' respective rights to the
13 Settlement Payments." (Dkt. No. 3378-2 at 7.)

14 Following Executive VW's initiation of the Connecticut interpleader action, VWGoA filed
15 a motion in this Court to enforce the Settlement. In its motion, VWGoA asks this Court to enjoin
16 the interpleader action and to declare that Montesi, rather than Executive VW, is a Class Member
17 under the Settlement. (Dkt. No. 3378 at 4.) Executive VW followed by filing a motion to
18 intervene to oppose VWGoA's motion and to file its own motion to enforce the Settlement. (Dkt.
19 No. 3514.) In its later-filed motion to enforce the Settlement, Executive VW seeks a declaration
20 that it, rather than Montesi, is a Class Member, because it "operated" the North Haven dealership
21 as of September 18, 2015, pursuant to an informal agreement with Montesi. (Dkt. Nos. 3520 at 3;
22 3520-1 ¶¶ 3, 5.) Executive VW also seeks an order directing VWGoA to make settlement
23 payments to it, not Montesi, and requests that the Court hold an evidentiary hearing. (Dkt. No.
24 3520 at 3, 17-18.)

25 * * *

26 As part of the Settlement approval order, the Court "retain[ed] the exclusive jurisdiction to
27 enforce, administer, and ensure compliance with all terms of the Settlement" (Dkt. No. 2807
28 at 27 ¶ 8.) The Court exercises that ancillary jurisdiction to consider the motions to enforce the

1 Settlement and Executive VW's motion to intervene. *Kokkonen v. Guardian Life Ins. Co. of Am.*,
2 511 U.S. 375, 380-81 (1994); *Sandpiper Vill. Condo. Ass'n v. Louisiana-Pacific Corp.*, 428 F.3d
3 831, 841 (9th Cir. 2005).

4 Having considered the filings, the Court first GRANTS Executive VW's motion to
5 intervene. A key question before the Court is whether Executive VW is a Class Member.
6 Executive VW has a significant protectable interest in the resolution of that question. Executive
7 VW also satisfies the other elements to intervene as of right: The disposition of this action may
8 impair Executive VW's ability to protect its interest, Executive VW's application is timely, and
9 VWGoA does not adequately represent Executive VW's interest. *Wilderness Soc. v. U.S. Forest*
10 *Service*, 630 F.3d 1173, 1177 (9th Cir. 2011) (citing Fed. R. Civ. P. 23(a)).

11 Although intervention is appropriation, the Court DENIES Executive VW's motion to
12 enforce the Settlement. As noted above, Executive VW seeks a declaration that it, rather than
13 Montesi, is a Class Member, because it "operated" the North Haven dealership as of September
14 18, 2015, pursuant to an informal agreement with Montesi. (Dkt. Nos. 3520 at 3; 3520-1 ¶¶ 3, 5.)
15 Even if Executive VW exercised day-to-day control over the North Haven dealership on
16 September 18, 2015, Executive VW acknowledges that it was not an "authorized Volkswagen
17 dealer[]" as of that date, and that its operation of the dealership at that time was not pursuant to a
18 "valid Volkswagen Dealer Agreement." (Dkt. Nos. 1970 ¶ 2.4; 3520 at 6.) Executive VW
19 therefore falls outside the definition of a Class Member. And because Executive VW is not a
20 Class Member, VWGoA is not required to make settlement payments to Executive VW.

21 An evidentiary hearing is not needed to resolve Executive VW's motion because there are
22 no material facts at issue. *Kam-Ko Bio-Pharm Trading Co. v. Mayne Pharma (USA) Inc.*, 560
23 F.3d 935, 943 (9th Cir. 2009). Because Executive VW acknowledges that it did not operate the
24 North Haven dealership on September 18, 2015 pursuant to a valid Volkswagen Dealer
25 Agreement, there is no evidence that Executive VW could present that would lead to the
26 conclusion that it is a Class Member.

27 As for VWGoA's motion to enforce the Settlement, the Court GRANTS in part and
28 DENIES in part the motion. The Court grants the motion to the extent VWGoA seeks a

1 declaration that Executive VW is not a Class Member. But the Court denies VWGoA's requests
2 for an order enjoining the Connecticut interpleader action, and for an order declaring that Montesi
3 is a Class Member. Although federal courts have authority pursuant to the All Writs Act to enjoin
4 State court actions, the Anti-Injunction Act prevents a federal court from doing so unless
5 "expressly authorized by Act of Congress, or when necessary in aid of its jurisdiction, or to protect
6 or effectuate its judgments." *Sandpiper*, 428 F.3d at 842 (quoting 28 U.S.C. § 2283). At this
7 time, it is not necessary for the Court to enjoin the Connecticut interpleader action to aid the
8 Court's jurisdiction or effectuate its judgments. Specifically, there is no reason to believe that the
9 Connecticut Superior Court will seek to interpret the Settlement Agreement in a way that conflicts
10 with this Court's judgments, in light of this Court's determination that Executive VW is not a
11 Class Member. For sake of clarity, it is also not necessary, nor is it appropriate, for this Court to
12 interfere with Executive VW's breach of contract action against Montesi in Connecticut Superior
13 Court.

14 As for VWGoA's request for a declaration that Montesi is a Class Member, the only party
15 challenging Montesi's status as a Class Member is Executive VW, but Executive VW lacks
16 standing to assert such a challenge because it is not a party to the Settlement Agreement. The
17 requested declaration is therefore not appropriate.

18 * * *

19 For the reasons discussed above, the Court ORDERS as follows:

- 20 (1) Executive VW's motion to intervene is GRANTED.
- 21 (2) Executive VW's motion to enforce the Settlement is DENIED.
- 22 (3) VWGoA's motion to enforce the Settlement is GRANTED in part and DENIED in
23 part.
- 24 (4) Executive VW is not a Class Member under the Volkswagen-Branded Franchise
25 Dealer Class Action Settlement Agreement.

26 If it later becomes necessary, VWGoA may file a motion to enforce the Settlement or this order.

27 **IT IS SO ORDERED.**

28 Dated: August 17, 2017

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CHARLES R. BREYER
United States District Judge